

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 2:19-cr-107
Civil Case No. 2:23-cv-02155

- VS -

District Judge Sarah D. Morrison
Magistrate Judge Michael R. Merz

CHRISTOPHER MICHAEL SAMMONS,

Defendant.

DECISION AND ORDER

This action on a Motion to Vacate under 28 U.S.C. § 2255 is before the Court on Defendant's Objections (ECF No. 181) to the Magistrate Judge's Report and Recommendations (ECF No. 180) recommending the Motion to Vacate be dismissed for want of prosecution. That Report is WITHDRAWN.

Litigation History

Defendant filed his Motion to Vacate a year ago on July 5, 2023 (ECF No. 168). Noting that neither the Motion nor the attached Declaration was signed, the Clerk entered a Deficiency Notice on July 10, 2023 (ECF No. 169). Defendant apparently received that Notice by mail because he responded on July 20, 2023, with a document captioned “Amended Motion to Vacate”

but which consists merely of his Declaration under penalty of perjury in support of the original Motion.

Judge Morrison evidently accepted Defendant's response because she issued an order to the United States to answer on August 4, 2023 (ECF No. 171). The Government responded as ordered on October 2, 2023 (Answer, ECF No. 173). Assistant United States Attorney Hill certified she mailed the Answer to Defendant the day that it was filed, but in his Objections Defendant claims he has never received it (ECF No. 181, PageID 2364, ECF No. 181-1, PageID 2366).

On May 2, 2024, Judge Morrison referred the Motion to Vacate to the undersigned (ECF No. 176). Although Defendant had not filed a reply to the Government's Answer, the undersigned found the Motion to Vacate was not ripe for decision because:

Defendant's filings do not satisfy the pleading requirements of the Rules Governing § 2255 Proceedings. To correct those deficiencies, it is hereby ordered that not later than June 10, 2024, Defendant shall file an amended motion to vacate in the form required by Rule 2. The Clerk shall furnish Defendant a copy of that form with his copy of this Order. Both the Motion and any Declaration must be separately signed as required by Fed.R.Civ.P. 11 and 28 U.S.C. § 1746. Alternatively, any statement of supporting facts may be by affidavit.

(Order for Additional Proceedings, ECF No. 177, PageID 2352-53). A second reason the case was not ripe was because the Court had not received testimony from Defendant's trial counsel. *Id.* They were ordered to provide Affidavits which they have done (ECF No. 179).

The Order for Additional Proceedings with a blank copy of the form for § 2255 motions was mailed to Defendant by the Clerk on May 9, 2024. Plaintiff claims he did not receive that Order until June 28, 2024 (Objections, ECF No. 181, PageID 2364). When Defendant failed to file a complying motion to vacate by June 10, 2024, the undersigned recommended the case be

dismissed (Report, ECF No. 180). To ensure this case is fully and fairly litigated, the Report and Recommendations is WITHDRAWN.

Future Proceedings

Defendant has now filed an Amended Motion to Vacate (ECF No. 182) which pleads only one ground for relief:

Ground One: Defendant received ineffective assistance of counsel in the plea negotiation process when counsel advised Defendant to go to trial, resulting in the loss of favorable plea opportunities.

Supporting Facts: See Memorandum of Points and Authorities in Support of Petitioner's 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Vacate a Conviction and Sentence (Doc. 168) and the enclosed Declaration of Christopher Michael Sammons which are incorporated herein by reference.

Id. at PageID 2371. Defendant avers he did not raise this issue on appeal because there was no record of counsel's advice to review.

In support of the Amended Motion, Defendant has filed a Declaration which closely follows the Declaration he made in support of the original Motion to Vacate (Compare ECF No. 168, PageID 2297-99 with ECF No. 182-1, PageID 2380-84). In preparing that Declaration, Defendant has had the benefit of being able to review the Affidavit filed by his defense counsel which expressly says he rejected every plea offer the Government made; he has not controverted that statement.

To bring this matter to ripeness for decision, it is hereby ORDERED:

1. The Clerk shall forthwith forward to Defendant copies of ECF Nos. 173 and 179 by certified mail, return receipt requested and shall docket the return receipt when received.

2. Defendant's time to file a reply in support of his Amended Motion to Vacate is set at August 30, 2024. In his reply, Defendant shall set forth any issues of fact which he believes must be resolved by evidentiary hearing, what witnesses he would call to testify to those facts, and the basis for his belief those witnesses could be heard under the Rules of Evidence.

July 10, 2024.

s/ *Michael R. Merz*
United States Magistrate Judge